In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 946

SECURITY STATE BANK OF PHARR, TEXAS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This case involves the validity under the Texas constitution of a Texas statute requiring that assignments of accounts receivable arising out of a construction contract describe the land on which the work is being done and be recorded in the county where the land lies.[1]

[1] 1A Texas Vernon's Civil Statutes Annotated:

"Art. 260-1. *Accounts and accounts receivable; notices; records*—

DEFINITIONS

"Section 1. In this Act, unless the context otherwise requires:

"(1) 'Account' or 'account receivable' means an existing or future right to the payment of money presently due, or to become due * * * the assignor: 'account' or 'account receivable' shall not include any sums of money accruing to a contractor for labor performed or material furnished on any public or private construction contract *unless the assignment properly*

The petitioner is a Texas bank which failed to record an assignment of a balance due on a construction contract given as security for its loan to a subcontractor. Its claim was therefore subordinated to a subsequent federal tax lien, in an interpleader suit (removed to the Federal District Court for the Southern District of Texas) to determine the right to the balance. To avoid the effect of its inadvertence, the petitioner contended that the recordation statute was unconstitutional in that the title of the enacted bill did not declare the subject of the bill as required by the Texas constitution.[2] The district court rejected this contention (Pet. App. 1–10), and its decision was affirmed *per curiam* by the Court of Appeals for the Fifth Circuit (Pet. App. 11). The decision below is plainly correct.

In 1945 the Texas legislature set forth recording requirements for assignments of accounts receivable.[3]

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describes the land upon which the improvements are to be constructed and such assignment filed in the office of the County Clerk of the county wherein the land lies; which assignment shall not be effective prior to such filing." [Emphasis supplied.]

* * * * *

[2] Constitution of the State of Texas (1876), 1 Vernon's Texas Constitution, Art. 3:

"SEC. 35. SUBJECTS AND TITLES OF BILLS

"No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed."

[3] Acts 1945, 49th Leg., p. 463, c. 293; Pet. App. 12–16.

In 1955 it passed an amendment excepting from the protection of the earlier statute assignments of receivables under a construction contract where performance was guaranteed by a surety.[4] As a result of that amendment, construction contractors were unable to obtain interim financing, creating a condition requiring immediate remedial legislation. Hence, in 1957, another amendment was adopted abolishing the exception made in the 1955 bill and affording protection to all assignments of accounts receivable under a construction contract, *provided* that the assignment described the property on which the improvements were being made and was recorded in the county in which the property lay.[5]

The title of the 1957 amendment was—

> An Act relating to *protected assignments of accounts receivable;* amending subdivision (1) of Section 1 of Chapter 293, Acts of the Forty-ninth Legislature, as amended (Article 260–1, Vernon's Texas Civil Statutes), so as to change the definition of "account" or "account receivable" by deleting provisions excluding sums accruing to a contractor who has furnished a surety bond; and declaring an emergency. [Emphasis added.]

That title gave ample notice of the bill's provisions for the protection of assignments of accounts receivable arising out of construction contracts, and is well within the liberal construction of Article 3, Section 35 of the Texas constitution as announced by the Texas courts. *Central Education Agency* v. *Inde-*

[4] Acts 1955, 54th Leg., p. 822, c. 302, Sec. 1; Pet. App. 17–20.
[5] Acts 1957, 55th Leg., p. 818, c. 348, Sec. 1; Pet. App. 21–23.

pendent School District of City of El Paso, 254 S.W. 2d 357, 361–362 (Tex. Sup. Ct.), rehearing denied, February 11, 1953; *Texas Liquor Control Board* v. *Warfield,* 111 S.W. 2d 862, 864 (Tex. Civ. App.); *Consolidated Underwriters* v. *Kirby Lumber Co.,* 267 S.W. 703, 705 (Tex. Com. App.).

Here two federal courts, both presumably familiar with Texas law (see *Sims* v. *United States,* 359 U.S. 108, 114), applied a settled rule of State law to a particular set of facts. The result reached is that which would have obtained in a Texas court. There is no occasion for further review here.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.
LOUIS F. OBERDORFER,
Assistant Attorney General.
JOSEPH KOVNER,
ROBERT J. GOLTEN,
Attorneys.

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